IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No. 17408 OF 1998

Date:29.08.2007

BETWEEN:

M. Penta Rao

…. PETITIONER

And

1. Visakhapatnam Port Trust, Visakhapatnam rep. by its Chairman, and others.

…. RESPONDENTS

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the action of the respondent in not regularizing the services in the post of Stock Verifier as illegal and arbitrary and consequently direct the third respondent to regularize the services of the petitioner w.e.f., 30.11.1994 with all consequential benefits.

It appears, the petitioner was initially appointed as Blacksmith (Grade-II) on 25.05.1976 with the first respondent-Visakhapatnam Port Trust in the Mechanical Department of Ore Handling Complex. The petitioner belongs to S.C. category. He had also obtained diploma in Licentiate Mechanical Engineering in the year 1985. According to him, he was selected as Assistant Stock Verifier
(Class-III) in Finance Department w.e.f., 12.09.1990. Subsequently, he was promoted as Stock Verifier (Grade-II) on ad hoc basis w.e.f., 30.11.1994. The grievance of the petitioner is that a vacancy in the category of S.C. had fallen vacant and therefore, he was promoted on ad hoc basis w.e.f., 30.11.1994 as Stock Verifier (Grade-II). But, however, instead of continuing him, the respondents are trying to disturb his position. Therefore, he filed the present writ petition.

The third respondent filed a detailed counter affidavit, denying the allegations made by the petitioner, stating that the petitioner suppressed the real facts and obtained interim order to

continue him as a Stock Verifier (Grade-II). In fact the petitioner was reverted to the post of Assistant Stock Verifier w.e.f., 30.05.1998 F.N., and the third respondent has been promoted in the place of the petitioner vide proceedings dated 5.06.1998 passed by the first respondent-Port Trust. It is also the contention of the third respondent that the vacancy was initially earmarked for S.C. category. Once a candidate belonging to S.C. category was appointed and roster was filled up, and when the said person left the employment on account of which the vacancy fell vacant, that vacancy cannot be again reserved for S.C. category and it would fall to the general category. Therefore, the third respondent was promoted to the said vacancy, as the petitioner is not entitled to the said post as a matter of right since he belongs to S.C. category. The said vacancy was de-reserved and again filled up as per the decision made by the Constitution Bench of the Supreme Court in the case of **R.K. Sabharwal v. State of Panjab**[1] pursuant to which the Government of India issued instructions replacing the vacancy based rosters by post based rosters vide Government of India, Department of Personnel & Training O.M. dated 2.07.1997 and the Port Trust has implemented the said O.M. In view of the said implementation of post-based roster, the said vacancy had now fallen against a general vacancy. The petitioner has not mentioned anything about the implementation of post-based roster in the respondent organization and consequent falling of this vacancy against general vacancy. Therefore, the third respondent prays to dismiss the appeal.

There is no necessity of going into all these details. Once, the post against a roster point has been filled up and the person,

who occupied the said vacancy has left the employment, it has to be slide down and it becomes a general vacancy as per the vacancy position as on that date. It seems, since this vacancy had fallen against general category, the third respondent was appointed vide proceedings dated 5.06.1998 and the petitioner was reverted from the post of Stock Verifier (Grade-II) to that of Assistant Stock Verifier (Grade-III) w.e.f., 30.05.1998 (FN). Further the interim order passed by this Court was vacated on 11.08.1998. The petitioner had suppressed all these facts. Under these circumstances, I am of the opinion that the writ petition is devoid of any merit and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

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(C.V. Ramulu, J.)

29th August, 2007
Js.

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[1] 1995 (1) SLR 791